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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057272
Party	Defendant Park City Hotel Associates, LLC DBA Hotel Park City
Correspondence Address	PARK CITY HOTEL ASSOCIATES LLC 2001 PARK AVENUE PARK CITY, UT 84060-5157 UNITED STATES
Submission	Answer
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Date	07/10/2013
Attachments	Answer to RHOA petition to cancel.pdf(54868 bytes)

**1 UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 4284182
Mark: **HOTEL PARK CITY (words only)**

Hotel Park City Residential Condominium
Project Association, Inc.,

Petitioner,

v.

Park City Hotel Associates, LLC,

Registrant.

Cancellation No. 92057272

ANSWER TO PETITION TO CANCEL

Registrant, Park City Hotel Associates, LLC (“Registrant”), through its undersigned counsel, denies that Hotel Park City Residential Condominium Project Association, Inc. (“Petitioner” and “RHOA”) has priority in or is the proper owner of the HOTEL PARK CITY trademark, and that RHOA has been and will continued to be injured by the existence of Registrant’s registration of this mark in Class 43 since RHOA has never used the mark in connection with Class 43 service and could register a mark in Class 35 in connection with homeowner association services, and Registrant answers the allegations in the numbered paragraphs in Petitioner’s 29 May 2013 Petition to Cancel as follows (the numbered paragraphs below correspond to the numbered paragraphs in the Petition):

1. Admits that Petitioner (RHOA – the residential homeowners association) represents residential unit owners (but not the owners of the commercial units) of the Hotel Park City Condominium Project ("Project" or “Hotel”); but denies the remaining allegations in this paragraph and denies any allegations not expressly admitted herein.

2.-3. Admits that Registrant's predecessors, HPC Development, LLC and HPC Resorts, LLC, existed before any Residential Unit Owner and before RHOA was created, that HPC Development, LLC and HPC Resorts, LLC exclusively used the HOTEL PARK CITY marks in connection with the hotel services they provided to the eventual Residential Unit Owners, that HPC Development, LLC registered the words-only HOTEL PARK CITY trademark for "hotels" services on the Supplemental Register under Class 43 (U.S. Reg. No. 2684973), that HPC Resorts, LLC provided hotel management (including unit rental management) and related hotel services from the hotel opening until Registrant purchased HPC Resorts, LLC in its entirety; and alleges that, since its purchase of HPC Resorts, LLC, and of the "Hotel Unit," "Spa Unit," and "Restaurant Unit," (collectively herein, the "Commercial Units"), Registrant – and only Registrant – has continued to provide these same hotel services under Class 43, that RHOA has never provided hotel services under Class 43, and that RHOA has provided only homeowner association services under Class 35; and denies the remaining allegations in these paragraphs, and denies any allegations not expressly admitted herein.

4. Admits, upon information and belief, that a single residential unit owner, as an apparent pretext in connection with this and other disputes with Registrant, declined Registrant's services in 2012; and alleges, based on the Declaration of Condominium, Hotel Park City, an Expandable Condominium Project, recorded with the Summit County Recorder, 1 November 2002 ("Declaration"), and, therefore, a binding covenant running with the land, as owner of the hotel, spa, and restaurant Commercial Units, that Registrant is the exclusive provider of hotel services at the Hotel and that residential unit owners are expressly prohibited from providing any such commercial services; denies that Registrant offers its hotel services under the name "PCHA," and alleges that it offers such hotel services under the Utah-registered dba "Hotel Park

City” and the HOTEL PARK CITY trademarks, and denies any allegations not expressly admitted herein.

5. Admits that Registrant enters into annual rental management agreements with all residential unit owners (except one, recently); but alleges that, as the Commercial Units owner under the Declaration, Registrant has the exclusive right to provide hotel services at the property; and denies any allegations not expressly admitted herein.

6. Admits that a residential homeowners association in the name of Petitioner was registered as a non-profit “Civic and Social Organization” (not “Traveler Accommodation”) corporation with the State of Utah on January 15, 2013, and that the members of RHOA are to elect a management committee; but denies the remaining allegations in this paragraph and denies any allegations not expressly admitted herein.

7. Admits that RHOA’s specific purposes according to its 15 January 2003 Articles of Incorporation are “to provide for maintenance, preservation and architectural control of the [‘residential condominium’] Units[, Sub-Units] and Common Elements” owned by the members of RHOA, and denies the remaining allegations of this paragraph, and denies any allegations not expressly admitted herein.

8. Admits only that while some goodwill associated with the Hotel inures indirectly, as an economic matter, to the benefit of the residential owners; but alleges that the Registrant, as a matter of law, acquired the goodwill associated with the hotel services provided by Registrant’s predecessors under the HOTEL PARK CITY trademarks based on Registrant’s continuous and exclusive use of the trademarks in providing such hotel services, and that the goodwill associated with the hotel services provided by Registrant under the HOTEL PARK CITY trademarks inures to the benefit of Registrant; and Registrant denies any allegations not expressly admitted herein.

9. Registrant is without information or knowledge sufficient to form a belief as to the truthfulness of the allegation relating the Petitioner's knowledge and therefore denies the same, denies the remaining allegations in this paragraph, and denies any allegations not expressly admitted herein.

10. Admits.

11. Admits that Petitioner applied for the HOTEL PARK CITY trademarks on 9 October 2012, but denies the remaining allegations in this paragraph, and denies any allegations not expressly admitted herein.

12. Admits.

13. Admits that the office actions refusing registration of RHOA's applied-for marks were dated 6 February 2013, and admits that the USPTO refused to register RHOA's applied for marks based on a likelihood of confusion with U.S. Application Serial No. 85601162 and U.S. Registration No. 4047901, but denies any allegations not expressly admitted herein.

14. Registrant denies each and every allegation not expressly admitted herein.

15. Admits.

16. Denies and alleges that RHOA has never used the HOTEL PARK CITY trademarks in connection with hotel services under Class 43.

17. Denies.

18. Admits.

19. Denies.

20. Admits that RHOA has been prevented from registering the HOTEL PARK CITY trademarks in Class 43 based on the continued presence of Registrant's pending application, and based on Registrant's registration of the HOTEL PARK CITY words-only trademark on the

Supplemental Register; but denies the remaining allegations in this paragraph; and alleges that nothing prevents RHOA from registering a HOTEL PARK CITY RESIDENTIAL HOMEOWNERS ASSOCIATION trademark under Class 35, and denies any allegations not expressly admitted herein.

21. Registrant denies each and every allegation not expressly admitted herein.

22.-23. Admits that RHOA's specific purposes according to its 15 January 2003 Articles of Incorporation are "to provide for maintenance, preservation and architectural control of the ['residential condominium'] Units[, Sub-Units] and Common Elements" owned by the members of RHOA; but denies the remaining allegations of these paragraphs, and denies any allegations not expressly admitted herein.

24. Admits, based on the Declaration of Condominium, Hotel Park City, an Expandable Condominium Project, recorded with the Summit County Recorder, 1 November 2002 ("Declaration"), and, therefore, a binding covenant running with the land, as owner of the hotel, spa, and restaurant Commercial Units, that Registrant is the exclusive provider of hotel services at the property and that residential unit owners are expressly prohibited from providing any such commercial services; but denies the remaining allegations in this paragraph, and denies any allegations not expressly admitted herein.

25. Admits that Registrant's predecessors, HPC Development, LLC and HPC Resorts, LLC existed before any residential unit owner and before RHOA was created, that HPC Development, LLC and HPC Resorts, LLC exclusively used the HOTEL PARK CITY marks in connection with the hotel services they provided to the eventual residential unit owners, that HPC Development, LLC registered the words-only HOTEL PARK CITY trademark for "hotels" services on the Supplemental Register under Class 43 (U.S. Reg. No. 2684973), that HPC

Resorts, LLC provided hotel management and related resort hotel services from the Hotel opening until Registrant purchased HPC Resorts, LLC in its entirety; and alleges, that, since its purchase of HPC Resorts, LLC, and of the Commercial Units, Registrant has continued to provide these same services under Class 43, that RHOA has never provided resort hotel services under Class 43, and that RHOA has only provided homeowner association services under Class 35, and denies any allegations not expressly admitted herein.

26. Admits that RHOA's specific purposes, according to its 15 January 2003 Articles of Incorporation, are "to provide for maintenance, preservation and architectural control of the ['residential condominium'] Units[, Sub-Units] and Common Elements" owned by the members of RHOA; but denies the remaining allegations of this paragraph, and denies any allegations not expressly admitted herein.

27. Denies.

28. Denies.

AFFIRMATIVE DEFENSES

1. Petitioner has failed to state a claim upon which relief can be granted.

2. Petitioner lacks standing to bring this opposition proceeding since it has only used HOTEL PARK CITY in connection with Class 35 residential homeowner association services and never in connection with Class 43 resort hotel services.

3. Petitioner lacks superior rights in and to the applied-for words-and-design HOTEL PARK CITY or the words-only HOTEL PARK CITY trademark in connection with Class 43 services because Registrant's predecessors-in-interest, HPC Development, LLC and HPC Resorts, LLC, exclusively and continuously provided those services before Petitioner / RHOA was created (and thereafter), Petitioner never petitioned to cancel HPC Development,

LLC's prior registration of the words-only HOTEL PARK CITY trademark (U.S. Registration No. 2684973) following its registration date in 2003, Registrant has exclusively and continuously provided such services after it acquired HPC Resorts, LLC and the hotel, spa, and restaurant Commercial Units, and Registrant is the registrant of the words-only HOTEL PARK CITY trademark (U.S. Registration No. 4284182), and Petitioner and its residential unit owner members have never provided and are, in fact, prohibited by binding covenant running with the land from providing such services.

4. Petitioner's allegations are barred by the equitable doctrines of waiver, estoppel, and/or acquiescence.

WHEREFORE, Registrant respectfully requests that this Petition be denied in its entirety, with prejudice, and that the registration owned by Registrant under Registration Number 4284182 be approved and issue.

DATED this 10th day of July, 2013.

FILLMORE SPENCER

/s/ Barnard N. Madsen
Barnard N. Madsen
Attorneys for Registrant

CERTIFICATE OF SERVICE

I certify that on the 10th day of July, 2013, I caused a true and correct copies of the **ANSWER TO PETITION TO CANCEL** to be sent by U.S. Mail, First-Class, postage prepaid, to the following:

Ruth Rivard, Esq.
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

/s/ Beverly A. Royer
FILLMORE SPENCER